



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1995

Ms. Laura S. Portwood  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-825

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34313.

The City of Houston (the "city") received a request for a copy of "a memorandum from Lenoria Y. Walker, Interim Director of Affirmative Action, to E.A. Corral, dated on or about April 28, 1995, regarding 'Recommended Selection Criteria,' and any attachments to that memorandum." You claim that portions of the requested information are excepted from disclosure under sections 552.103(a) and 552.111 of the Government Code. You have submitted a copy of the document at issue. We understand that the city has provided the requestor with an opportunity to review a redacted copy of the requested information.

Section 552.103(a) excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted to this office for review several complaints filed with the Equal Employment Opportunity Commission ("EEOC"), in which firefighters and firefighter trainees and cadets have complained of discrimination in connection with the city's hiring procedures. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Therefore, the city has met the first prong of the section 552.103(a) test. We also conclude that the marked portions of the document are related to the anticipated litigation. Therefore, the city may withhold from required public disclosure the marked portions of the submitted document under section 552.103(a). We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

SES/RHS/rho

Ref.: ID# 34313

Enclosures: Marked document

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<sup>1</sup>Similarly, section 552.111 of the Government Code would not except from disclosure documents that have been disclosed to the public. Open Records Decision No. 435 (1986). We need not address the remainder of your section 552.111 claim because we have concluded that section 552.103(a) excepts the marked portions of the document from disclosure.

cc: Mr. J. Wiley George  
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One Houston Center  
1221 McKinney Street, Suite 2800  
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(w/o enclosure)